

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>9/24/2024</u>

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 LOCAL 3621, EMS OFFICERS UNION, DC-37,
 :
 AFSCME, AFL-CIO, individually and on behalf of its
 :
 members, RENAE MASCOL, and LUIS RODRIGUEZ,
 :
 on behalf of themselves and on behalf of all other
 :
 similarly-situated individuals,
 :

18-cv-4476

Plaintiffs,

ORDER

-v-

CITY OF NEW YORK, et al.,

Defendants.
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LEWIS J. LIMAN, United States District Judge:

Plaintiffs’ request to compel production of five EEO complaints alleging age discrimination and retaliation is DENIED.

Rule 26(b)(1) permits discovery into “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The Court is not convinced that the five complaints are relevant or proportional to the needs of this case. It is true that “[a]s a general matter, in an employment discrimination case such as this, evidence regarding similar acts is relevant to the plaintiff’s claim.” *Malzberg v. NYU*, 2020 WL 3618962, at *2 (S.D.N.Y. July 2, 2020). However, Plaintiffs do not establish that the five complaints at issue are “similar” to Plaintiffs’ discrimination claims such that they would have any bearing on the case. Plaintiffs allege discrimination based on race, sex/gender, and disability. The Court has ordered the production of complaints of discrimination on those grounds. Although the Federal Rules permit liberal discovery, Plaintiffs have failed to show how

five complaints against the two senior members of the Fire Department for age-based discrimination or retaliation would tend to support Plaintiffs' claims of discrimination here.


Plaintiffs' citation to *Lieberman v. Gant*, 630 F.2d 60 (2d Cir. 1980) is inapposite as, in that case, Judge Friendly merely noted that "[e]vidence of general patterns of discrimination by an employer is relevant even in an individual disparate treatment case" without holding that a pattern of discrimination on the basis of one protected trait is relevant to an individual's claim of discrimination on the basis of a different protected trait. Indeed, courts regularly limit discovery of discrimination complaints to complaints regarding discrimination only on the bases alleged by the plaintiff. *E.g.*, *Malzberg*, 2020 WL 3618962, at *3 (permitting discovery of "complaints and/or charges of discrimination on the basis of disability"); *Max Torgovnick v. SoulCycle, Inc.*, 2018 WL 5318277, at *4 (S.D.N.Y. Oct. 29, 2018) ("Defendant is directed to produce documents relating to any complaints regarding disability discrimination, retaliation, medical leave, failure to provide reasonable accommodations, and harassment").

Ultimately, Plaintiffs' letter does not state grounds for broadening the Court's September 19, 2024 order that Defendants are to produce all formal complaints based only on race, sex/gender, or disability discrimination filed against Roberto Colon and James Booth from 2012 to the present.

Plaintiffs' letter motion for discovery, Dkt. No. 611, is denied.

SO ORDERED.

Dated: September 24, 2024
New York, New York


LEWIS J. LIMAN
United States District Judge